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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91212258
Party	Plaintiff Top Tobacco L.P.
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Submission	Motion for Default Judgment
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Date	09/09/2014
Attachments	Motion_for_Default_Jgmt__for_P_O_P_.pdf(11673 bytes) EX A.pdf(120102 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Top Tobacco, L.P.

Opposer

v.

Tabacalera El Artista S.R.L.

Applicant

Opposition No. 91212258

Mark: P.O.P

Serial No. 85/798,713

**MOTION FOR ENTRY OF THE SANCTION
OF DEFAULT AND DEFAULT JUDGMENT**

Pursuant to TBMP § 527.01(a), Fed. R. Civ. P. 37(b)(2) and 37 CFR § 2.120(g)(1), Opposer Top Tobacco, L.P., (“Top Tobacco”) hereby moves the Board for entry of the sanction of default and default judgment against Applicant, Tabacalera El Artista S.R.L., (“Tabacalera”) based on Tabacalera’s failure to comply with the Board’s July 25, 2014 Order compelling Tabacalera to respond to Top Tobacco’s discovery requests.

In support of this motion, Top Tobacco states as follows:

1. On July 25, 2014, the Board ruled on a Motion to Compel filed by Top Tobacco and ordered Tabacalera to provide responses to Top Tobacco’s First Set of Interrogatories and First Set of Requests for Production of Documents, without objection, within thirty (30) days from the mailing of the Order—in other words, by August 25, 2014. The Board further warned Tabacalera that failure to comply with the July 25, 2014 Order may result in sanctions, including the sanction of default judgment.

2. Tabacalera failed to comply with the July 25, 2014 Order. Subsequently, on September 3, 2014, Top Tobacco, through its counsel, attempted to call Tabacalera’s counsel

requesting a response regarding its intent to produce its outstanding discovery responses and sent a letter, attached hereto as Exhibit A, confirming the same.

3. Despite Top Tobacco's numerous attempts to elicit discovery responses from Applicant, Tabacalera has not responded in any way to Top Tobacco's attempts to contact Applicant, and has not provided any discovery responses as required by the Board's July 25, 2014 Order.

4. Based on Tabacalera's failure to provide the responses as ordered by the Board in the July 25, 2014 Order, Top Tobacco hereby request for sanctions in the form of entry of judgment against Applicant. Tabacalera's pattern of non-responsiveness and failure to comply with Top Tobacco's requests as well as the Board's Order indicates that it intends to delay this proceeding and evade its discovery obligations.

WHEREFORE, Top Tobacco respectfully requests that the Board enter an Order pursuant to TBMP § 527, Fed. R. Civ. P. 37(b) and 37 CFR § 2.120(g) (i) entering default and default judgment against Applicant; (ii) sustaining this Opposition proceeding with prejudice; and (iii) refusing registration of Tabacalera's Application for the P.O.P. mark with prejudice; and granting such other relief as the Board deems appropriate.

Respectfully submitted,

Date: September 9, 2014

/Antony J. McShane/
One of the Attorneys for Opposer,
Top Tobacco L.P.

Antony J. McShane
Andrea S. Fuelleman
Neal, Gerber & Eisenberg LLP
2 North LaSalle Street, Suite 1700
Chicago, Illinois 60602
312.269.8000

CERTIFICATE OF SERVICE

I, Andrea S. Fuelleman, an attorney, state that I served a copy of the foregoing ***Motion for Entry of the Sanction of Default and Default Judgment*** upon the following:

Darren S. Rimer
Rimer & Mathewson LLP
30021 Tomas, Suite 300
Rancho Santa Margarita, California, 92688

by depositing said copy in a properly addressed envelope, First Class postage prepaid, and depositing same in the United States mail at Two North LaSalle Street, Chicago, Illinois, on the date noted below:

Date: September 9, 2014

/Andrea S. Fuelleman/

One of the Attorneys for Opposer,
Top Tobacco, L.P.

EXHIBIT A

September 3, 2014

VIA FEDERAL EXPRESS AND EMAIL

Darren S. Rimer, Esq.
Rimer & Mathewson LLP
30021 Tomas, Suite 300
Rancho Santa Margarita, California, 92688

**Re: Top Tobacco LP v. Tabacalera El Artista S.R.L.
Opposition Proceeding No. 91212258 re P.O.P.**

Dear Mr. Rimer:

Further to my voicemail earlier today, we have not yet received a response regarding your client's discovery responses, which, pursuant to the Board's July 25, 2014 Order, were due on August 25, 2014. Please let us know when you will be producing these responses. If we do not hear from you promptly, we will be forced to file a motion for default judgment.

Sincerely,



Andrea S. Fuelleman

cc: Antony J. McShane, Esq.

NGEDOCs: 2197593.1